

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD20-001
LOCATION OF PROPERTY	3939 Snell Avenue
ZONING DISTRICT	A(PD) Planned Development
GENERAL DEVELOPMENT PLAN	PDC96-035 (Ordinance No. 25267)
GENERAL PLAN DESIGNATION	Neighborhood/Community Commercial
PROPOSED USE	Planned Development Permit to allow the addition of two hydrogen refueling dispensers with associated 473-square foot hydrogen equipment structure, a transformer and electrical panels at an existing gas station (Shell) on a 0.91-gross acre site
ENVIRONMENTAL STATUS	Exempt pursuant to CEQA Guidelines Section 15303 for New Construction or Conversion of Small Structures
OWNER/ADDRESS	Dave Jordaan First Element Fuel Inc 5281 California Avenue #260 Irvine, CA 92617
APPLICANT /ADDRESS	Kristi Kandel I&D Consulting UPS PO Box 7172 – 280 195 Hwy 50, #104 Stateline, NV 89449-7172

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

- 1. Project Description.** Planned Development Permit to allow the addition of two hydrogen refueling dispensers with associated 473-square foot hydrogen equipment structure, a transformer and electrical panels at an existing gas station (Shell) on a 0.91-gross acre site

The site has ingress/egress driveways from West Capitol Expressway as well as Snell Avenue. The subject site has an existing gas station with auto repair and a mini-mart which operates 24-hours a day, seven days a week.
- 2. Site Description and Surrounding Uses.** The site is located on the northwest corner of West Capitol Expressway and Snell Avenue, at 3939 Snell Avenue.

The subject 0.91-gross acre site is bounded by industrial uses along the northern and western property lines, Snell Avenue on the eastern and Capitol Expressway on the southern property lines. The project site abuts public storage uses to the north and west, a gas station (Chevron) to the east, across Snell Avenue, a standalone carwash and Starbucks retail buildings to the south across Capitol Expressway.

3. **General Plan Conformance.** The Envision San José 2040 General Plan Land Use/Transportation Diagram designation for this site is Neighborhood/Community Commercial. This designation supports a very broad range of commercial activity, including commercial uses that serve neighboring communities. The proposed hydrogen fuel dispensers and ancillary equipment addition to the existing gas station with a mini mart and auto repair are commercial uses which will continue to serve the local neighborhood and thus conform to the Neighborhood/Community Commercial General Plan designation.
4. **Zoning Compliance.** The subject site is located in the A(PD) Planned Development Zoning District established with Zoning File No. PDC96-035. Pursuant to Section 20.100.910 of the San José Municipal Code, a Planned Development Permit is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure in conformance with the Zoning Ordinance. The proposed project conforms to the approved General Development Plan of the Planned Development Zoning District as follows:
 - a. **Use.** The project entails an addition of two hydrogen fuel dual dispenser pumps and associated equipment to an existing gas station on site.
 - b. **Setbacks and Height.** The General Development Plan does not identify specific setbacks and height for fuel dispensers and equipment. The project provides a minimum six-foot landscape setback from the northern and western property lines for the location of the 10.2-foot high ancillary equipment. The two new hydrogen fuel dispensers will be located adjacent to the existing four fueling dispensers. Each new hydrogen fuel dispenser will be under a 14'-6" high fiberglass canopy cover.
 - c. **Parking.** Pursuant to Section 20.90.060 of the Zoning Ordinance, the total requirement of vehicle parking spaces is per Table 1 below:

Land Use	Standard per code	Required Parking for the Project	Total Spaces (Required)
Gas Station	1 per employee, plus 1 per air and water pumps service area, plus 1 per information stop	3 employees per shift = 1 space Air/water service = 1 space Information stop = 1 space	5 spaces
Service Bays (auto repair)	4 spaces per each bay	3 Service Bays (1,496 square feet)	12 spaces
Retail (minimart)	1 space per 200 square feet of retail space	150 net square feet	1 space
Total Required			18 spaces

Table 1: Parking Requirements

The project would add two new hydrogen fuel pumps with removal of four parking spaces and addition of three parking spaces. The project provides 12 vehicle surface parking spaces, including one ADA parking stall, on site and 12 spaces at the six dual pump islands, for a total of 24 spaces, which exceed the parking requirement.

5. Environmental Review.

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Planned Development Permit is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303 New Construction or Conversion of Small Structures exempts projects consisting of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel.

The proposed project would result in the addition of the hydrogen fuel dispenser, associated equipment structure, and site modifications to an existing gas station. Although the project would result in temporary construction effects, the project would be subject to applicable project Conditions of Approval and Standard Environmental Permit Conditions to implement best management practices during these activities. The physical changes to the site would be negligible and would not create a substantial or significant environmental impact. For the reasons cited above, the project will not result in a significant environmental impact and qualifies for an exemption under Section 15303 of the CEQA Guidelines for New Construction or Conversion of Small Structures.

Through the environmental and project review of this proposal, the project will incorporate all standard permit conditions and measures, in accordance with City standards and regulations for construction and operations that will not result in any significant or unacceptable negative effects on the environment or adjacent uses.

FINDINGS

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

Planned Development Permit Findings. Section 20.100.940 of the San José Zoning Ordinance establishes the required findings for issuance of a Planned Development Permit. The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts with respect to the Planned Development Permit findings, that:

1. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan.

Analysis: The subject site has a General Plan Land Use/ Transportation Diagram designation of Neighborhood/Community Commercial which supports a very broad range of commercial uses serving neighboring communities. The proposed hydrogen fuel dispensers and ancillary equipment addition to the existing gas station with a mini mart and auto repair are commercial uses which will continue to serve the local neighborhood and thus conform to the Neighborhood/Community Commercial General Plan designation.

2. The Planned Development Permit, as issued, conforms in all respects to the planned development zoning of the property.

Analysis: As discussed above, the subject site is located in the A(PD) Planned Development Zoning District, and this Planned Development Permit would allow the installation of two hydrogen fuel dispensers and associated ancillary equipment, with related site improvements, consistent with the development standards of the zoning district (File No. PDC96-035), as analyzed under the zoning ordinance conformance section above. The proposed development conforms with all required setbacks, height, and parking requirements.

3. The Planned Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project has been noticed for public hearing to a radius of 500 feet, consistent with the Public Outreach City Council Policy 6-30. There are no other specific City Council policies for installation of new fueling dispensers and associated equipment at an existing gas station site.

4. The interrelationship between the orientation, location, mass and scale of building volume, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.

Analysis: The 473-square foot ancillary equipment will be located along the north western corner of the property with a minimum six-foot landscape setback from the north and west property lines. The exterior walls of the equipment structure will be finished with painted stucco and base siding wall materials with a flat roof. The 10.2-foot high equipment structure will be well-integrated, in mass and scale, with the existing gas station building on site. The hydrogen fuel pumps will be adjacent to the existing gas fuel pumps under a 14'-6" high fabricated aluminum fiberglass cover, as shown in the approved plans. The fueling station will have internal blue module LED illumination under the blue lattice cover. All existing uses and proposed structures will maintain adequate parking, pedestrian access and circulation, therefore, will be aesthetically harmonious and mutually compatible with each other on site.

5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties

Analysis: The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties, in that the project involves installation of two new hydrogen fuel dispensers under a lattice cover, with associated ground equipment, which will not cause noise or vibration or any other negative impacts to the surrounding neighborhood. Noise, as conditioned with this permit, is limited to the construction of the project between the hours of 7:00 a.m. to 7:00 p.m., Monday to Friday. Stormwater Management and runoff has been reviewed and approved per Final Public Works Memorandum dated 3/17/20.

6. Traffic access, pedestrian access and parking are adequate.

Analysis: The project provides 12 vehicle surface parking spaces, including one ADA parking stall, on site and 12 spaces at the six dual pump islands, for a total of 24 spaces, which adequately meets the parking requirement. The site is well-connected to existing sidewalks for ease of pedestrian access. The proposed ingress/egress driveway from Snell Avenue and Capitol Expressway have been reviewed by Public Works Department and deemed adequate for vehicle access and exit and the project will not cause any adverse traffic impacts, pursuant to Public Works Final Memo dated 3/17/20.

In accordance with the findings set forth above, a Planned Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Affordable Housing Financing Plans.** The San José City Council (“City”) approved the Envision San José General Plan 2040 (“General Plan”) in 2011. The General Plan provides the framework for development located in San José.

The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further

agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

4. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Hydrogen Fueling Station," 3939 Snell Avenue, San Jose, CA 95136, dated received August 6, 2020, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code with the exception of any subsequently approved changes.
5. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
6. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
7. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
8. **Trash.** All trash areas shall continue to be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall continue to be maintained in a manner to discourage illegal dumping.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction, as applicable.
10. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage, as applicable.
11. **Building and Property Maintenance.** The property owner shall maintain the property in good visual and functional condition.
12. **Nuisance.** As required by Title 20 of the San Jose Municipal Code, construction on this site shall be conducted in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
13. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number **PD20-001** shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance begins with the initial plan check submittal to the Building Division. Prior to any building permit

issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.

14. Bureau of Fire Department Clearance for Issuing Permits. Prior to the issuance of a Building Permit, the project must comply with the California Fire Code.

15. Environmental Standard Permit Conditions

a. Air Quality.

- i. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- ii. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of "running in proper condition" prior to operation.

b. Geology and Soils.

- i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- iv. To avoid or minimize potential damage from seismic shaking, project construction shall use standard engineering and seismic safety design techniques. Complete building design and construction at the site in conformance with the recommendations of an approved geotechnical investigation. The geotechnical investigation report shall be reviewed and approved by the Department of Public Works as part of the building permit review and entitlement process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- v. The project shall be constructed in accordance with standard engineering practices in the California Building Code, as adopted by the City of San José. The project applicant shall obtain a grading permit from the Department of Public Works prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vi. Consistent with General Plan policy ER-10.3, the following Standard Permit Conditions shall be implemented by the project to reduce or avoid impacts to paleontological resources to a less than significant level.
 - 1) The project proponent shall ensure all construction personnel receive paleontological resources awareness training that includes information on the possibility of encountering fossils during construction; the types of fossils likely

to be seen based on past finds in the project area; and proper procedures in the event fossils are encountered. Worker training shall be prepared and presented by a qualified paleontologist.

- 2) If vertebrate fossils are discovered during construction, all work on the site shall stop immediately until a qualified professional paleontologist can assess the nature and importance of the find and recommend appropriate treatment. Treatment may include Virginia Studios Project 61 Final Initial Study City of San José October 2018 preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project proponent shall be responsible for implementing the recommendations of the paleontological monitor.

c. Hydrology and Water Quality.

- i. Prior to the issuance of a grading permit, the applicant shall prepare and submit an Erosion Control Plan for review and approval by City Public Works Department.
- ii. The project applicant shall implement the following conditions:
 - 1) Install burlap bags filled with drain rock around storm drains to route sediment and other debris away from the drains.
 - 2) Water all exposed or disturbed soil surfaces at least twice daily to control dust as necessary.
 - 3) Water or cover stockpiles of soil or other materials that can be blown by the wind.
 - 4) Cover all trucks hauling soil, sand, and other loose materials and maintain at least two feet of freeboard on all trucks.
 - 5) Comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City's Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

d. Noise

- i. Noise minimization measures include, but are not limited to, the following:
 - 1) Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
 - 2) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - 3) Prohibit unnecessary idling of internal combustion engines.
 - 4) Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- 5) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
 - 6) Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
16. **Public Works.** Prior to the issuance of building permits, the applicant will be required to have satisfied all of the following Public Works conditions. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>
- a. **Transportation:** This project would not require a detailed CEQA transportation analysis because the project is expected to result in less than significant VMT impacts. No transportation analysis is required.
 - b. **Grand Boulevard:** This project fronts Capitol Expressway, which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
 - c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10-year storm event.
 - iii. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
 - d. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.

- e. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - f. **Street Improvements:** Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
17. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **2nd day of September 2020.**

Rosalynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy